

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
NORTHERN DIVISION**

In re: Aqua Marine Enterprises, Inc.	)	Case No.: 18-80464-CRJ-11
EIN: xx-xxx3036	)	
	)	
	)	
Debtor.	)	Chapter 11

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY TO CONDUCT  
DISCOVERY ON THE MATTER OF DAMAGES AND REDUCE JUDGMENT TO A  
SUM CERTAIN; AND REQUEST TO EXPEDITE HEARING OF THIS MOTION**

COMES NOW, K&B Fabricators, Inc. (“Creditor”), and pursuant to 11 U.S.C. § 362(d), seeks limited relief from the automatic stay on grounds as follows:

1. On September 28, 2018, the Supreme Court of Alabama issued its decision on the appeal of Creditor’s state court judgment against the Debtor company and its non-bankrupt owner. The Supreme Court reversed the \$531,000.00 damages award entered in favor of Creditor and against Defendant Brent Mitchell. The Supreme Court remanded the case for further proceedings to determine the correct amount of damages based on the profits earned by the Debtor, Aqua Marine Enterprises, Inc., in the fabrication of storm shelters.

2. The Supreme Court upheld the trial court’s entry of a constructive trust against the Debtor’s profits.

3. To comply with the Alabama Supreme Court’s directive concerning calculation of the Creditor’s damages against Mr. Mitchell and the Debtor, Aqua Marine Enterprises, Inc., Creditor needs to conduct additional discovery in the state court lawsuit including interrogatories, requests for production, requests for admission, and depositions against the Debtor. This calculation of damages is also necessary to value the Creditor’s claim in this bankruptcy case along with its damages award against non-debtor Defendant Brent Mitchell.

4. Given that a calculation of damages against a non-debtor defendant is involved, the Creditor also avers that the state court trial court is the best venue to determine the sum certain amount of Creditor's judgment.

5. To date this bankruptcy case has been pending since February 2018, Creditor is the Debtor's primary creditor in its Chapter 11 case, and the Debtor has not proposed a disclosure statement and plan. Accordingly, a speedy resolution of this matter is necessary. Creditor respectfully requests that this Court expedite the hearing of this Motion for Relief.

WHEREFORE, premises considered, K&B Fabricators, Inc. respectfully requests that this Honorable Court enter an Order:

- (a) Expediting the hearing on this matter;
- (b) Upon notice and a hearing, granting the Creditor limited relief from the Automatic Stay to conduct the discovery against the Debtor as outlined by this Motion;
- (c) Granting the Creditor further relief from the Automatic Stay to re-try the calculation of the amount of Creditor's damages against the Debtor and Mr. Mitchell in state court and then amend Creditor's proof of claim in this Chapter 11 case accordingly; and
- (d) Granting such further relief as this Court deems just and proper.

Respectfully submitted this 30<sup>th</sup> day of October, 2018.

/s/ Tazewell T. Shepard IV

Tazewell T. Shepard IV

An Attorney to K & B Fabricators, Inc.

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### **CERTIFICATE OF SERVICE**

This is to certify that I have this day served the foregoing document upon all parties as listed on the Clerk's Certified Matrix, Aqua Marine Enterprises, Inc., Debtor, 1301 Industrial Drive, Hartselle, AL 35640, Kevin D. Heard, Attorney for Debtor, Heard Ary & Dauro LLC, 303 Williams Avenue SW, Ste. 921, Huntsville, AL 35801, and Richard M. Blythe, Office of the Bankruptcy Administrator, P.O. Box 3045, Decatur, AL 35602, by electronic service through the Court's CM/ECF system and/or by placing a copy of same in the United States Mail, postage pre-paid.

Done this 30<sup>th</sup> day of October, 2018.

/s/ Tazewell T. Shepard IV

Tazewell T. Shepard IV